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Chiron Corporation
Intellectual Property-R440
P.O. Box 8097
Emeryville, CA 94662-8097

In re Application of :
Xiao, et al. :
Application No.: 10/505,159 : DECISION
PCT No.: PCT/US03/05874 :
Int. Filing Date: 25 February 2003 :
Priority Date: 25 February 2002 :
Attorney's Docket No.: 072121-0397 :
For: INTRASAL ADMINISTRATION OF MC4-R :
ANTAGONISTS :

This decision is in response to applicant's "OFFICIAL REQUEST FOR COPY OF NOTICE TO FILE MISSING REQUIREMENTS AND RESET OF STATUTORY RESPONSE PERIOD" which is being treated as a petition under 37 CFR 1.181, filed on the 12 August 2005.

BACKGROUND

On 25 February 2003, applicant filed international application PCT/US03/05874 that claimed priority of earlier United States provisional applications, the earliest of which was filed 25 February 2002. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 25 August 2004.

On 20 August 2004, applicant filed a letter for entry into the national stage in the United States which was accompanied by, *inter alia*, an information disclosure statement, an Application Data Sheet and the basic national fee of \$730 as required by 35 U.S.C. 371(c). These papers were assigned application number 10/505,159.

On 21 April 2005, the United States Designated/Elected Office (DO/EO/US) mailed applicant a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" which required a signed oath or declaration. This notification set a two month time period for response which was extendable under 37 CFR 1.136(a).

On 12 August 2005, applicant filed the current communication requesting that the response period be restarted for the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905).

DISCUSSION

MPEP section 711.03 establishes the requirement to show non-receipt of an Office action. It states, in part:

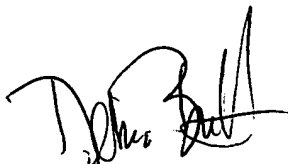
To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

Applicant provided a customer number on filing. As a result, the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" was mailed to Chiron Corporation. Therefore, Chiron Corporation must provide the documentation as set out in the above section of the MPEP.

CONCLUSION

The petition is **DISMISSED** without prejudice.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration



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